


MEMORANDUM

TO: ZONING AND PLANNING COMMITTEE OF THE BOARD OF ALDERMEN

FROM: CANDACE HAVENS, INTERIM DIRECTOR OF PLANNING AND DEVELOPMENT
EVE TAPPER, CHIEF ZONING CODE OFFICIAL 

RE: INFORMATION FOR JUNE 14, 2010 WORKING SESSION

DATE: JUNE 10, 2010

CC: LESLIE BURG, PLANNING AND DEVELOPMENT BOARD SUBCOMMITTEE ON SCENIC
ROADS

PETITION # 142-10 ■ Request for adoption of amendment to Chapter 20, Offenses and Miscellaneous Provisions of City of Newton Ordinances relative to regulation of scenic roads

RECOMMENDATION Adopt ordinance to enforce scenic roads regulations and procedures approved by Planning and Development Board in May 2010.

BACKGROUND Massachusetts General Law Chapter 40 Section 15C (*Attachment "A"*) authorizes municipalities to designate roads as "scenic" upon the recommendation of the Planning Board, Conservation Commission, or Historical Commission. The "Scenic Roads Act" is deliberately vague as to definitions and procedures, leaving it to cities and towns to craft suitable local regulations.

Since the enactment of the Statute, Newton has designated 17 roads or parts of roads as "scenic" (*Attachment "B"*) meaning that any repair, reconstruction, maintenance, or paving work involving the cutting or removal of trees or stone walls within the public right-of-way by private developers or City departments, requires the approval of the Planning Board. Both Newton's *Recreation and Open Space Plan* and the *Comprehensive Plan* (2007) call for protecting our scenic roads by enforcing the Scenic Roads Act, and by developing the regulations and procedures needed to do so effectively. However, none existed until the Planning and Development Board adopted these regulations in May 2010 (*Attachment "C"*). It is anticipated that these regulations will protect present and future scenic roads in Newton, and facilitate the administration of the law. Trees and stone walls on private property are not affected by the law.

ANALYSIS The State statute permits a municipality to impose a penalty of up to \$300, for each offense, for noncompliance with the Scenic Roads Act. The Planning Board's regulations lay out what constitutes noncompliance; however, the Planning Board cannot impose a penalty to compel compliance. In order to enforce these regulations, the Board of Aldermen must adopt an amendment to the City's Ordinance to impose a penalty. This proposed amendment is the subject of this working session (*Attachment "D"*).

Attachment A: Mass General Laws Chapter 40, Section 15C

Attachment B: List of Scenic Roads in Newton as of June 10, 2010

Attachment C: Regulations for designation of scenic roads adopted by P&D Board, May 2010

Attachment D: Draft Ordinance

§ 15C. Designation of Scenic Roads; Maintenance, etc.

[The first paragraph is amended to read as follows:]

Upon recommendation or request of the planning board, conservation commission or historical commission of any city or town, such city or town may designate any road in said city or town, other than a numbered route or state highway as a scenic road; provided, however, that a numbered route may be designated by a city or town as a scenic road if its entire length is contained within the boundaries of said city or town, and no part of said route is owned or maintained by the commonwealth.

[The second paragraph is amended to read as follows:]

After a road has been designated as a scenic road any repair, maintenance, reconstruction, or paving work done with respect thereto shall not involve or include the cutting or removal of trees, or the tearing down or

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C. 40**ANNOTATED LAWS OF MASSACHUSETTS****§ 15C**

destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, after a public hearing duly advertised twice in a newspaper of general circulation in the area, as to time, date, place and purpose, the last publication to occur at least seven days prior to such hearing; provided, however, that when a public hearing must be held under the provisions of this section and under section three of chapter eighty-seven prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided in said section three of chapter eighty-seven. Any city or town making said scenic road designation may make an ordinance or by-law establishing that a violation of this paragraph shall be punished by a fine not to exceed three hundred dollars. (Amended by 1985, 384, approved October 15, 1985, effective 90 days thereafter; 1989, 360, approved September 18, 1989, effective 90 days thereafter.)

[No change in balance of section.]

Editorial—
The 1985 amendment provided the exception that a numbered route could be designated a scenic route if its entire length is contained within the boundaries of a city or town, and no part is owned by the commonwealth.

The 1989 amendment added the second sentence to the second paragraph, allowing any city or town to establish an ordinance or by-law which provides for the imposition of a fine not exceeding \$300, for the violation of respect to designated scenic roads.

Texts—

Mendler, Massachusetts Conveyancers' Handbook with Forms, §§ 13:1-13:9, Environmental Controls.

LIST OF SCENIC ROADS IN NEWTON, MA AS OF JUNE 10, 2010

Brookside Avenue (entire length)
Chestnut Street (from Boylston Street to Washington Street)
Concord Street (from Washington Street to the Charles River)
Dudley Road (from Boylston Street to Brookline Street)
Fuller Street (west from Chestnut Street to Commonwealth Avenue)
Grove Street (entire length)
Hammond Street (from Ward Street to Longwood Road)
Hancock Street (entire length)
Highland Street (from Valentine Street to Hunter Street)
Hobart Road (from Commonwealth Avenue to Beacon Street)
Lake Avenue (from Walnut Street to Beacon Street)
Mill Street (entire length)
Sumner Street (from Willow Street to Commonwealth Avenue)
Valentine Street (from Commonwealth Avenue to Highland Street)
Waban Avenue (from Beacon Street to E. Quinobequin Street)
Woodcliffe Road (from Centre Street to Elinor Road)
Woodland Road (from Washington Street to Central Street)

REGULATIONS FOR THE DESIGNATION OF SCENIC ROADS AND
ALTERATIONS OF TREES AND STONE WALLS THEREON

SECTION 1 STATUTORY PROVISION

These regulations have been duly adopted by the Newton Planning and Development Board as of _____, 2010 to implement its duties under the provisions of the "Scenic Road Act," M.G.L. Chapter 40 Section 15C.

SECTION 2 PURPOSE

The Scenic Road Act governs the cutting and removal of trees and stone walls during repair, maintenance, reconstruction or paving of roads by any entity, public or private, for the purpose of providing protection to the environmental, aesthetic and historical values of the City's roads. The Newton Planning and Development Board has adopted these regulations to ensure that:

- A. Ways will be recommended for designation as scenic roads based on stated criteria;
- B. Ways so designated will not be altered without following proper procedures and without adherence to proper considerations

SECTION 3 DESIGNATION OF SCENIC ROADS

Scenic roads may be designated by majority vote of the Board of Aldermen if such action has been requested or recommended by the Planning Board, Conservation Commission, or Historical Commission. Prior to making such a request or recommendation, the Planning Board shall hold a public hearing on the petition, notifying the Board of Aldermen, the Tree Warden, the Conservation Commission, and the Historical Commission and advertising twice in a newspaper of general circulation; the first advertisement at least fourteen (14) days prior to the date of the public hearing.

Notification of the public hearing shall also be sent to:

- A. Owners of property having frontage along the proposed scenic road;
- B. The Newton Department of Public Works;

- C. The Massachusetts Department of Transportation, if applicable; and
- D. All utility companies or other such parties that have or propose utility installations within such road.

Scenic road designations shall be effective as of the date of the Board of Aldermen's action. Any work on any portion of the right-of-way of a scenic road, which was not physically commenced at the time the road was designated as a scenic road, shall conform to these regulations.

**SECTION 4 CRITERIA FOR THE PLANNING BOARD'S
RECOMMENDATION THAT A ROAD BE DESIGNATED AS A
SCENIC ROAD (any or all of the following shall be considered)**

- A. The trees within or adjoining the right-of-way have exceptional value ,
- B. The trees within or adjoining the right-of-way are part of vistas, frame a distant view, or make an important contribution to the character of the vicinity
- C. There are stone walls or other outstanding natural or man-made features within or adjoining the right-of-way
- D. If the road were altered, the change would likely destroy the exceptional scale or proportion of natural or man-made features within or adjoining the right-of-way

SECTION 5 DEFINITIONS

"Cutting and removal of trees" shall mean the cutting down of any tree protected by this regulation and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a tree so protected, including, but not limited to, excessive or improper pruning, except as exempted in Section 6.1.

"Repair, maintenance, reconstruction, or paving work" shall mean any work done within the right-of-way by any person or agency, public or private including:

- A. Sidewalk construction or alteration;
- B. Driveway construction or alteration;
- C. Underground utility installation or alteration;

- D. Overhead utility installation or alteration;
- E. Routine maintenance for any of the above.

“Road” shall mean the entire right-of-way of a vehicular traveled right-of-way including any necessary appurtenances including bridge structures, drainage systems, retaining walls, traffic control devices, sidewalks, but not intersecting streets. The right-of-way includes the area on and within boundaries of the public way. If the boundaries are not officially known, any affected tree or stone wall shall be presumed to be within the public right-of-way until shown otherwise.

“Stone walls” shall mean assemblages of stone not exempted in Section 6.2.

“Tearing down or destruction of stone walls” shall mean the destruction of stone walls along a public way. Temporary removal and replacement of stone walls at the original location with the same materials shall not be considered “destruction” if the City’s Department of Public Works is notified before the work begins so that it can confirm that the wall is properly replaced.

“Trees” shall mean any woody plants that normally grow to a mature height greater than 18 feet (18’) and trunk diameter greater than six inches (6”) at DBH.

SECTION 6 ACTIONS EXEMPT FROM PUBLIC HEARINGS AND APPROVAL

6.1 Tree Removal

The procedures of these regulations shall not apply if:

- A. Emergency work is determined by the Commissioner of the Department of Parks and Recreation, in consultation with the Commissioner of the Department of Public Works, to be necessary to protect health, property and safety prior to possible Planning Board consent;
- B. The tree limbs to be cut have a diameter of less than four inches (4”);
- C. The tree roots to be cut have a diameter of less than two inches (2”);
- D. As determined by the City Tree Warden, the tree or the limbs to be cut are dead or damaged;

- E. As determined by the Planning Board, sufficient evidence has been provided, by the applicant, to document that the trees' trunks are not within the road right-of-way.

6.2 Stone walls

The procedures of these regulations shall not apply if:

- A. The stone wall contains either less than one (1) cubic foot of wall material above grade at the lower foot of the wall per linear foot or the stone wall is less than ten feet (10') in length;
- B. As determined by the Planning Board, sufficient evidence has been provided, by the applicant, to document that the stone wall is not within the road right-of-way.

SECTION 7 PROCEDURES

7.1 Filing

Any person, organization, state or municipal agency seeking the consent of the Planning Board under M.G.L. Ch. 40, Section 15C (the Scenic Road Act) regarding the cutting or removal of trees or the tearing down or the destruction of stone walls, or portions thereof, shall file a request with the Planning Board together with the following:

- A. Text identifying the location of the proposed action in terms enabling the readers to locate it with reasonable specificity on the ground without need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls;
- B. A plan showing the location of the proposed work in relation to the street right-of-way, curb line, and any sidewalks that may exist or be proposed.
- C. A statement of the purpose, or purposes, for the changes proposed;
- D. Except for City agencies, an application fee equal to fifty dollars (\$50) plus the cost of advertisements;
- E. Any further explanatory material useful to adequately inform the Planning Board.

7.2 Notice

The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area. This notice shall contain a statement as to the time, date, place, and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the Board of Aldermen, the Conservation Commission, the Historical Commission, the City Engineer, the Tree Warden, the City Department of Public Works, and the owners of all lots within 100 feet of the proposed action.

A sign at least 2' x 2' containing the same information as the public hearing notice must be prominently posted by the applicant at the location of the proposed work.

7.3 Timing of Notice

The first publication of the notice shall be at least 14 days before the hearing, and the last at least seven days prior to the hearing.

7.4 Timing of Hearing

The Planning Board shall hold a public hearing within 30 days of the Planning Board meeting at which a properly filed request is received.

7.5 Timing of Decision

The Planning Board shall make a decision on the request within 21 days of the closing of the public hearing.

7.6 Tree Warden

Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under M.G.L. Ch. 87. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the Tree Warden, or vice versa. The Planning Board decision shall contain a condition that no work shall be done until the applicant complies with all applicable provisions of the Public Shade Tree Law, M.G.L. Ch. 87.

7.7 Historic District Commissions

Whenever feasible, the Planning Board hearings shall be held in conjunction with those held by one of the City's Local Historic District Commissions acting under City Ordinance Section 22-40 and M.G.L. Ch. 40C. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the Local Historic District Commission,

or vice versa. The Planning Board decision shall contain a condition that no work should be done until the applicant complies with all applicable provisions of City Ordinance Section 22-40 and M.G.L. Ch. 40C.

SECTION 8 DECISION CRITERIA

The Planning Board's decision on any application for proposed action affecting scenic roads shall be based on consideration of the following:

- A. The degree to which the proposed action would adversely affect the scenic and aesthetic values upon which the road designation was originally based;
- B. The necessity of the proposed action in terms of protecting public safety, welfare or convenience;
- C. Compensatory actions proposed, such as replacement of trees or walls;
- D. The availability of reasonable alternatives to the proposed action that could reduce or eliminate anticipated damage to trees or stone walls;
- E. Whether the proposed action would compromise or harm other environmental or historical values; and
- F. Whether the proposed action is consistent with previously adopted City plans and policies.

SECTION 9 DESIGN GUIDELINES

9.1 Stone walls

Reconstruction of any stone wall shall meet the following guidelines:

- A. Stone from existing walls shall be used to the greatest extent possible rather than importing stone;
- B. The character of the replacement wall shall be as consistent as possible with that of the stone wall that was removed.

9.2 Driveway construction or reconstruction

The construction of a new driveway or the reconstruction of an existing driveway along a scenic road shall meet the following guidelines:

- A. The construction or reconstruction of a driveway shall meet the standards required by the City Zoning Ordinance Section 30-19;

- B. Stone wall opening for driveways shall not exceed the driveway width by more than a total of four feet (4'), and by not more than two feet (2') in width on each side of the driveway, unless greater width is necessitated for compliance with other regulations;
- C. No driveway shall be located so as to require removal of a tree having trunk diameter exceeding eight inches (8") measured at 4 ½ feet from the ground unless there is no less damaging feasible alternative;
- D. Driveways shall be located so as to minimize cut and fill within the right-of-way so as to preserve existing vegetation;
- E. Not more than one driveway curb cut serving a single- or two-family dwelling shall be allowed onto a scenic road unless the Planning Board finds more than one to be justified by special circumstances such as unusually long frontage or a shared driveway.

9.3 Trees

Unless excluded by the decision of the Planning Board pursuant to Section 8 Decision Criteria, any cutting and removal of trees shall be subject to provisions substantially parallel to those specified for "protected trees" under Chapter 20 Sections 31 through 39, the Newton Tree Preservation Ordinance, administered by the Tree Warden, with the following exceptions.

- A. The minimum single trunk diameter to which these provisions shall apply is six inches (6") DBH, not the eight inches (8") specified at Chapter 20 section 31.
- B. Trees on publicly owned land will not be exempted as specified at Chapter 20 section 32(a).
- C. Any plans for tree replacement must have been approved by the Planning Board in consultation with the Tree Warden.

SECTION 10 ENFORCEMENT

10.1 Filing Requirement

Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within the right-of-way of a scenic road will require an immediate filing.

10.2 Compliance

If the Planning Board approves a project, the applicant (except for City agencies) may be required to provide a bond to cover the costs of the required work and the protection of resources, unless a bond for the work is required by another City Department.

Any approval not exercise within two (2) years of issue shall be void and shall require a new filing.

DRAFT ORDINANCE: Scenic Roads

Insert, after Article VIII. VACANT BUILDINGS, a new Article IX as follows:

ARTICLE IX SCENIC ROADS

Sec. 20-71 Regulation of Scenic Roads

1. **Role of the Planning and Development Board.** The Planning and Development Board (hereafter Planning Board) is authorized to promulgate rules and regulations to implement its administration of scenic roads under the provisions of section 15C of Chapter 40 of the General Laws.
2. **Enforcement and Penalties**
 - a. Failure to obtain approval of the Planning Board prior to cutting or removing trees, or tearing down or destruction of stone walls, or portions thereof, within the layout of a designated scenic road shall require the immediate filing of an application with the Planning Board and shall be subject to restoration of the features or other remediation plan, as the Planning Board may order. Work under an approved remediation plan must proceed in good faith continuously until completion by any time limit required in the plan, unless amended in writing by the Planning Board.
 - b. **Penalties.** Each violation of section 15C of Chapter 40 of the General Laws, or of any rule and regulation pertaining to scenic roads shall be punished by a fine of three hundred dollars \$300.00; each tree cut or stone wall removed and each day such violation continues shall constitute a separate offense. The Commissioner of Inspectional Services may revoke or withhold any current or pending permit on the property associated with said violation.
 - c. **Enforcement.** The Commissioner of Inspectional Services and the Tree Warden shall each have authority to enforce the provisions of this section upon request of and on behalf of the Planning Board, and shall keep the Planning Board apprised of the status of any such enforcement. Any person found to be in violation of this section shall receive a written warning and a minimum of thirty (30) days to remediate all violations or to enter into a Planning Board approved remediation plan prior to the institution of an enforcement action. Unless amended by the Planning Board, failure to comply with an approved remediation plan, including failure to proceed in good faith continuously until its completion, may result in an immediate enforcement action.